



December 12, 2001

**Via Electronic Filing**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

*Re: Ex Parte Presentation in CC Docket No. 01-277*

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, the Competitive Telecommunications Association ("CompTel") hereby gives notice that on December 10, 2001, its representatives, and a representative of CompTel members e.spire Communications, Inc. ("e.spire"), and Z-Tel Communications met with Commission staff to discuss BellSouth's 271 application for Georgia and Louisiana. Specifically, CompTel, e.spire, and Z-Tel discussed win-back and retention activities and the integrity of BellSouth's original data submitted in support of the present Application. CompTel also urged the Commission to grant Covad's Motion to Strike BellSouth's November 29, 2001 late-filed evidence. Copies of the attached presentation were used in the discussion. CompTel, e.spire, and Z-Tel met separately with Jordan Goldstein, Senior Legal Advisor to Commissioner Copps, and Matthew Brill, Legal Advisor to Commissioner Abernathy. Representing e.spire was Renee Terry. Representing Z-Tel was Thomas Koutsky. Representing CompTel was the undersigned attorney.

Sincerely,

A handwritten signature in black ink, reading "Jonathan D. Lee".

Jonathan D. Lee  
Vice President,  
Regulatory Affairs

# e·spire<sup>TM</sup>

*Communications Inc.*





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# *e.spire Communications, Inc.*

## *Ex Parte Presentation*

*BellSouth Application To Provide In-Region, InterLATA Services in Georgia and Louisiana*

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*Renee Terry*

*Director - Regulatory Affairs*

**December 11, 2001**

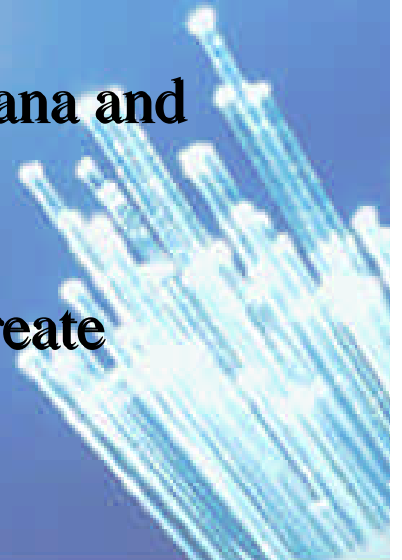




## **Ex Parte Presentation**

### ***e.spire Overview***

- **One of the fastest growing competitive providers of local telephone services:**
  - **Headquartered in Herndon, VA (Near Dulles Airport)**
  - **Fiber optic networks in 38 cities**
  - **Operates in BellSouth territory, including Louisiana and Georgia**
  - **Integrating telecommunication technologies to create customized solutions for businesses**





## Ex Parte Presentation

### *e.spire Overview*

- ***ACSI-NT*** – Subsidiary which provides optical fiber infrastructure solutions and strategic network design services in the U.S.
- ***CyberGate/ValueWeb*** – Subsidiary offering a comprehensive line of shared, dedicated, and collocation Web hosting solutions and related managed services





# Ex Parte Presentation

## *e.spire Products & Services*

- **Data: frame relay, ATM**
  - native LAN, managed services
- **Access: local access and special access**
- **Private line: local or national**
- **Connecting businesses nationwide**
- **Voice: local business lines and trunks, T1, ISDN PRI**
  - long distance and toll free
- **Internet: 56k to 45 Mbps**
  - DSL, web hosting and dedicated servers
  - standalone or integrated, managed services
- **Collocation services**





## **Ex Parte Presentation**

### ***e.spire Network***

- **Lucent 5ESS-2000 CO switch**
- **Alcatel 370 ATM switch**
- **Cisco 7513 core router**
- **Local fiber optic networks**
  - **LuxN**
  - **Fujitsu**
  - **Ciena**
- **Northeast Corridor fiber network**
  - **Nortel DWDM**





## Ex Parte Presentation

### *CheckList Items 1/ II / Public Interest*

- **BellSouth Fails to Satisfy CheckList Items 1& II**
  - WinBack Activities
  - EELs
  - Cross-Connects
- **Grant of BellSouth Application Is Not In the Public Interest**
  - Anti-competitive Marketing Practices
    - ◆ *Proprietary Carrier and Customer Information*
    - ◆ *Price Discrimination*
    - ◆ *Disparaging Comments*
  - Inadequate safeguards between wholesale and retail units





## **Ex Parte Presentation**

### ***CheckList Item II***

- **Section 271(c)(2)(B)(ii) requires BellSouth to provide “non-discriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1). CheckList Item II.**
  
- **BellSouth Does Not Provide Nondiscriminatory Access to OSS**
  - WinBack
  - EELs
  - Cross-Connects - Virtual Collocation





## Ex Parte Presentation

### *CheckList Item II*

- **BellSouth Has Failed to Fully Convert e.spire's EELs request**
  - March 24, 2000
- **BellSouth has flouted the FCC's Supplemental Order**
  - "the Process by which special access circuits are converted to unbundled loop-transport combinations should be simple and accomplished without delay."  
Para. 30, Supplemental Order Clarification.
  - BellSouth has placed regulatory roadblocks for EELs conversions
    - ◆ *co-mingling*





## Ex Parte Presentation

### *CheckList Item II*

- **e.spire is forced to pay higher special access costs and forgo significant cost savings in the absence of EELS.**
- **BellSouth has failed to tariff virtual collocation cross-connects thereby flouting the Commission's recent collocation rules, Fourth Report and Order, CC Docket No. 98-147.**





## Ex Parte Presentation

### *Public Interest*

- Section 271(d)(3)(C) of the Act prohibits the Commission from granting a section 271 application unless it finds that “the requested authorization is consistent with the public interest.” 47 U.S.C. § 271(d)(3)(C).
- Grant of BellSouth’s 271 Is Not In the Public Interest
  - anti-competitive Marketing Practices
    - ◆ *Price Discrimination*
    - ◆ *Disparaging Remarks*
  - Inadequate Safeguards between wholesale and retail units





## Ex Parte Presentation

### *Public Interest*

- **Section 201(b)** - (Service and Charges) prohibits unjust or unreasonable charges, practices, classifications, or regulations.
- **Section 202 (a)** - (Discrimination and Preference) prohibits unjust or unreasonable discrimination in connection with like services or undue or unreasonable preference or advantage to any particular person, class, or locality or subject any person, class of persons, or locality to undue or unreasonable prejudice or disadvantage.
- **Section 222 (b)** - (Privacy of Customer Information) prohibits carriers that receive or obtain proprietary information from another carrier for purposes of providing any telecommunications service from using such information for its own marketing efforts.



## Ex Parte Presentation

### *Public Interest*

- The FCC has interpreted section 222(b) to prohibit carriers from using carrier change information to attempt to change or unduly influence a subscriber's decision to switch to carriers. (*Slamming Order*) (1998).
- The FCC has stated that carriers may not use customer proprietary network information ("CPNI") or carrier proprietary information to retain existing customers, where the carrier obtained notice of a customer's imminent cancellation of service through the provision of wholesale carrier-to-carrier service. (*CPNI Order on Reconsideration*) (1999).



## Ex Parte Presentation

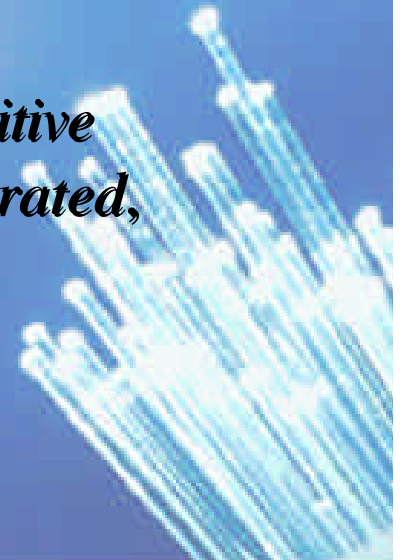
### *Public Interest*

#### ■ Alabama

- *In re: Full Circle Promotion, In re: Generic Proceeding Considering the Promulgation of Telephone Rules Governing Promotions, Alabama Public Service Commission, Dockets Nos. 27989 and 15957 (April 2, 2001).*

#### ■ Florida

- *In re: Investigations into allegation of anti competitive behaviors and practices of Sprint Florida, Incorporated, Docket No. 011075* **TL**





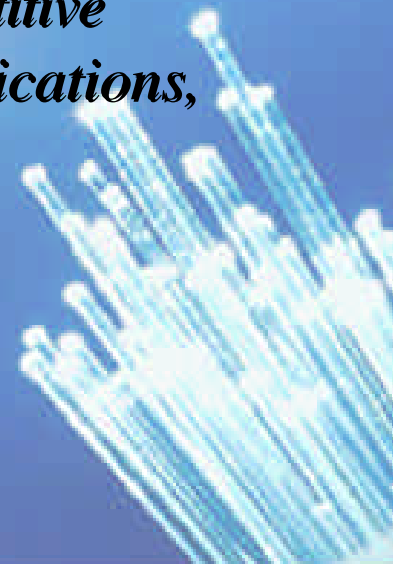


## Ex Parte Presentation

### *Public Interest*

#### ■ **Florida - continued**

- *In re: Investigation into allegations of anti competitive behaviors and practices of Verizon Florida, Incorporated, Docket No. 011076* **TL**
- *In re: Investigation into allegations of anti competitive behaviors and practices of BellSouth Telecommunications, Incorporated, Docket No. 011077* **TL**







## **Ex Parte Presentation**

### ***Public Interest***

- **Florida - *continued***

- **Note: These Proceedings Have Been Be Consolidated Into Docket No. 011077, Generic Investigation Into Whether Competitive Practices of Incumbent and Alternative Local Exchange Carriers Comply with Section 364.01(4)(g) , Florida Statute.**





## Ex Parte Presentation

### *Public Interest*

#### ■ Georgia

- In re: Investigation of BellSouth Telecommunications “Win back” Activities, Docket No. 14232 U
- The GA PSC adopted an interim order prohibiting BellSouth from engaging in “Win Back” activities for a seven day period after a customer switches local providers (Interim Order) (July 23, 2001).

#### ■ Louisiana

- The PSC adopted safeguards to prohibit BellSouth from engaging in any “Win Back” activities for a period of 7 days once a customer switches to another local telephone service provider.



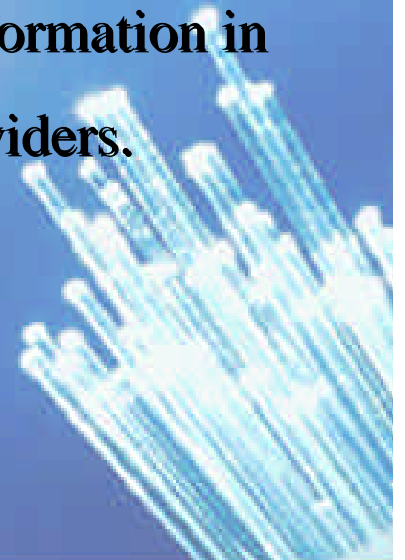
## Ex Parte Presentation

### *Public Interest*

#### ■ **Louisiana - *continued***

- The PSC also prohibits wholesale divisions from sharing information with its retail divisions such as notice that certain end users have requested to switch local service providers, and (b) prohibits BellSouth from including any marketing information in its final bill sent to customers that have switched providers.

*Docket No. U-22252 (E) Order (September 21, 2001)*  
*(Section 271 Proceeding).*

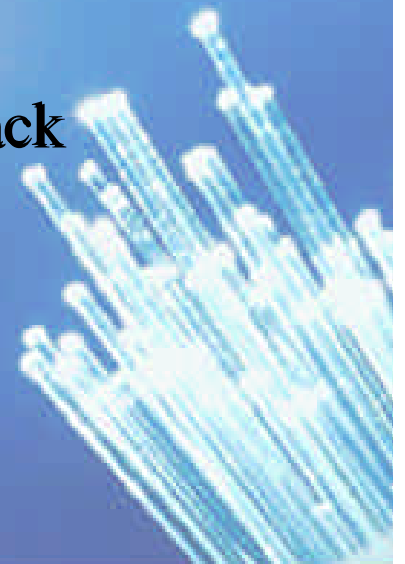




## **Ex Parte Presentation**

### ***Public Interest***

- **If BellSouth's Section 271 Is Granted, WinBack Safeguards Are Needed**
  - **Structural Separations**
  - **Restrict BellSouth WinBack to Period After Customers Obtain Services from CLECs**
  - **Penalty Provisions for Violations of FCC WinBack Rules**





## Ex Parte Presentation

### Conclusion

- **BellSouth's Georgia & Louisiana 271 Application Should Be Denied**
  - **BellSouth Fails to Comply with CheckList Items 1 & II**
    - ◆ *WinBack*
    - ◆ *EELS*
    - ◆ *Cross-Connects - Virtual Collocation Tariff*
  - **Grant of the Application Would Not Serve the Public Interest**
    - ◆ *BellSouth Engages in Anti-competitive Activities*
      - **WinBack Activities**

